

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Renewal Applications of)	
)	
Jonsson Communications Corp. d/b/a	)	File Numbers:
QuadraVision Digital Television	)	BRMD-20010412AAR
	)	BRMD-20010412AAS
To Operate Multipoint Distribution Service and	)	BRMD-20010412AAO
Commercial Instructional Television Fixed	)	BRMD-20010412AAU
Service Stations WFY434; WHT781; WHT782;	)	BRMD-20010412AAK
WJL89; WMX622; WMX623; WNTJ539 in Reno,	)	BRMD-20010412AAL
Nevada and Stations WMH705; WMH709;	)	BRMD-20010412AAP
WMX624; WMX625; WNTL575 in Carson City,	)	BRMD-20010412AAN
Nevada..	)	BRMD-20010412AAD
	)	BRMD-20010412AAC
	)	BRMD-20010412AAT
	)	BRMD-20010412AAQ

Memorandum Opinion and Order

Adopted: November 8, 2002

Released: November 13, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. In this *Memorandum Opinion and Order*, Jonsson Communications Corporation, d/b/a QuadraVision Digital Television (Jonsson) has filed applications for renewal, and a request for reinstatement of certain Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licenses.¹ These stations are located in Reno, Nevada (Stations WFY434; WHT781; WHT782; WJL89; WMX622; WMX623; WNTJ539) and Carson City, Nevada (Stations WMH705; WMH709; WMX624; WMX625; WNTL575) (collectively, the Stations). Additionally, Jonsson requests a waiver of the annual reporting requirements set forth in Sections 21.11(a) and 21.911 of the Commission's Rules.² For the reasons set forth below, on our own motion, we grant Jonsson a waiver of Section 21.11(c) of the Commission's Rules. Moreover, we grant Jonsson's request for waiver of the annual reporting requirements for the years 1997-2000. Accordingly, we direct the Licensing and Technical Analysis Branch to grant the renewal applications in accordance with this *Memorandum Opinion and Order*.

¹ See Application FCC File Nos. BRMD-20010412AAR; BRMD-20010412AAS; BRMD-20010412AAO; BRMD-20010412AAU; BRMD-20010412AAK; BRMD-20010412AAL; BRMD-20010412AAP; BRMD-20010412AAN; BRMD-20010412AAD; BRMD-20010412AAC; BRMD-20010412AAT; and BRMD-20010412AAQ (filed April 12, 2001), Reinstatement Attachment (filed July 17, 2001) (Reinstatement Request), and Waiver Attachment (filed August 2, 2001) (Waiver Request) (request that Commission accept late-filed Licensee Qualification Reports and Annual Reports for years 1997 through 2001).

² Waiver Request at 1. Between 1997 and 2000, Jonsson failed to comply with the Commission's annual report requirements. Jonsson filed its annual reports on July 27, 2001 for 2001.

2. On April 12, 2001, Jonsson filed renewal applications for the Stations. Jonsson's licenses had an expiration date of May 1, 2001. In July of 2001, the Commission accepted Jonsson's renewal applications for filing.³ On July 17, 2001, Jonsson requested reinstatement of the licenses. On August 2, 2001, Jonsson requested a waiver of the licensee reporting requirements.⁴

3. In the MDS service, licensees must file their renewal applications between thirty and sixty days prior to the license expiration date.⁵ Section 21.44 of the Commission's Rules provides, in pertinent part, that "a license is automatically forfeited in whole or in part without further notice to the licensee upon ... the expiration of the license period specified therein, unless prior thereto, an application for renewal of such license has been filed with the Commission."⁶ A licensee may file a petition for reinstatement of a forfeited license within thirty days of the license expiration date.⁷ A timely filed petition for reinstatement must adequately explain the failure to timely file the renewal application, and specify the procedures the licensee has established to ensure timely filings in the future.⁸

4. The expiration date on Jonsson's licenses was May 1, 2001. Thus, in order to be considered timely filed, Jonsson's renewal applications had to be submitted between March 1, 2001 and April 1, 2001. However, Jonsson did not file his renewal applications until April 12, 2001. Thus, the renewal applications were untimely under Section 21.11(c) of the Commission's Rules.⁹ We believe, however, that the licenses at issue were not forfeited because the renewal applications were filed before the scheduled date of expiration. The issue then becomes what effect should be given to the late-filed renewal applications. As discussed in further detail below, we conclude that the subject renewal applications should be processed rather than dismissed.

5. Section 21.19 of the Commission's Rules permits the Commission to grant a waiver of its rules on its own motion.¹⁰ We may grant such a waiver if the purpose of the rule will not be served or would be frustrated by its application in the case and that grant of the waiver is otherwise in the public interest. Section 21.11(c) serves two purposes: to ensure that parties will have a date certain after which they may file applications for an area covered by an expired license and ensures uninterrupted, authorized service to the public.¹¹ In determining whether to grant a late-filed application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance

³ Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, *Public Notice*, Report No. 424 (rel. July 3, 2001); Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, *Public Notice*, Report No. 442 (rel. July 20, 2001).

⁴ Jonsson Communications Corporation, d/b/a QuadraVision Digital Television Request for Waiver of Reporting Obligations for MDS Licensees for Calendar Years 1997-2000, Aug. 2, 2001 (Waiver Request). We note that Jonsson did not request a waiver of the filing deadlines for the renewal applications nor the petition for reinstatement. *Id.*

⁵ See 47 C.F.R. § 21.11(c).

⁶ See 47 C.F.R. § 21.44(a)(2). See *Burlington Cablevision, Inc., Order on Reconsideration*, 13 FCC Rcd 772, 775 ¶ 7 (VSD MMB 1998) (*Burlington*); *Superior Broadcasting Corporation, Memorandum Opinion and Order*, 7 FCC Rcd 7543 (DRB CCB 1992) (*Superior*).

⁷ *Burlington*, 13 FCC Rcd at 775 ¶ 7 citing 47 C.F.R. § 21.44(b)(1) – (3).

⁸ *Id.*

⁹ See 47 C.F.R. § 21.11(c); *Burlington*, 13 FCC Rcd at 775 ¶ 7.

¹⁰ See 47 C.F.R. § 21.19.

¹¹ See *Superior*, 7 FCC Rcd at 7543 ¶ 4.

record of the licensee.¹² Taking into account all the facts and circumstances of the instant matter, on our own motion, we grant Jonsson a waiver of Section 21.11(c).

6. We note that although Jonsson filed its renewal applications twelve days beyond the due date specified in the rules, it filed the applications eighteen days before the license terms actually expired. By filing its renewal applications prior to expiration of the license terms, we believe Jonsson sought to provide uninterrupted, authorized service to the public. Furthermore, we find that waiver of Section 21.11(c) is in the public interest as dismissal of Jonsson's applications in this situation would be unduly harsh and contrary to the public interest. In this regard, we take note of Jonsson's statements that it was providing video programming services (including news, public service and entertainment programming) to approximately 4,000 subscribers in the Reno and Carson City, Nevada, areas and providing these residents with a competitive choice for programming.¹³

7. Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely fashion. Thus, we admonish Jonsson to conform to this requirement in the future and to take any necessary steps to avoid future occurrences because the Commission does not routinely grant such waiver requests. In this connection, we note that Jonsson has indicated that it has implemented procedures to ensure timely filings in the future.¹⁴ In light of our decision to grant Jonsson a waiver of Section 21.11(c), we dismiss as moot Jonsson's petition for reinstatement.¹⁵

8. However, we must still address Jonsson's waiver request for its failure to file the annual reports as required by Sections 21.11(a) and 21.911. The Commission uses the licensee's annual reports to detect anticompetitive practices, assist in monitoring the development of wireless cable, and enforcing various rules.¹⁶ As noted above, we may grant a waiver of the Commission's rules if the purpose of the rule will not be served or would be frustrated by its application in the case and that grant of the waiver is otherwise in the public interest. In this instance, Jonsson argues that its failure to file the reports was not intentional and created no harm or hardship to any third party.¹⁷ Jonsson further states that it has operated its stations without interfering with the operations of other licensees.¹⁸ Additionally, we note that Jonsson has instituted procedures to ensure it accurately and timely files all future filing and compliance requirements.¹⁹

9. We agree with Jonsson that in this situation that no third party suffered any harm or

¹² See Letter dated June 3, 2002, from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to William W. Curry, Telecommunications Chief, District of Columbia Government (decision letter granting waiver request for Public Safety, Conventional Station KO4563).

¹³ *Id.* Waiver Request at 2.

¹⁴ Application for Reinstatement at 2, ¶ 4.

¹⁵ In accordance with specific requirements, the Commission may reinstate a license if reinstatement would serve the public interest, convenience, and necessity. See 47 C.F.R. § 21.44(b)(1).

¹⁶ See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, *Report and Order*, 5 FCC Rcd 6410, 6424 ¶ 94.

¹⁷ Waiver Request at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 2.

hardship as a result of Jonsson's failure to file the annual reports. We did not receive any complaints from other licensees or competitors concerning Jonsson's operations. Although we are encouraged by Jonsson's restructuring of its internal practices, again, we admonish Jonsson to comply with the Commission's filing requirements.

10. ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 308 and Sections 21.19 and 21.32(a), 47 C.F.R. §§ 21.19, 21.32(a) the renewal applications for Stations WFY434; WHT781; WHT782; WJL89; WMX622; WMX623; WNTJ539, WMH705; WMH709; WMX624; WMX625; and WNTL575 filed by Jonsson Communications Corporation d/b/a QuadraVision Digital Television on April 12, 2001 SHALL BE GRANTED.

11. IT IS FURTHER ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 21.44 and 21.19 of the Commission's Rules, 47 C.F.R. §§ 21.44, 21.19, the reinstatement requests filed by Jonsson Communications Corp. d/b/a QuadraVision Digital Television, on July 17, 2001 in connection with Stations WFY434; WHT781; WHT782; WJL89; WMX622; WMX623; WNTJ539, WMH705; WMH709; WMX624; WMX625; and WNTL575 ARE DISMISSED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. Sections 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau